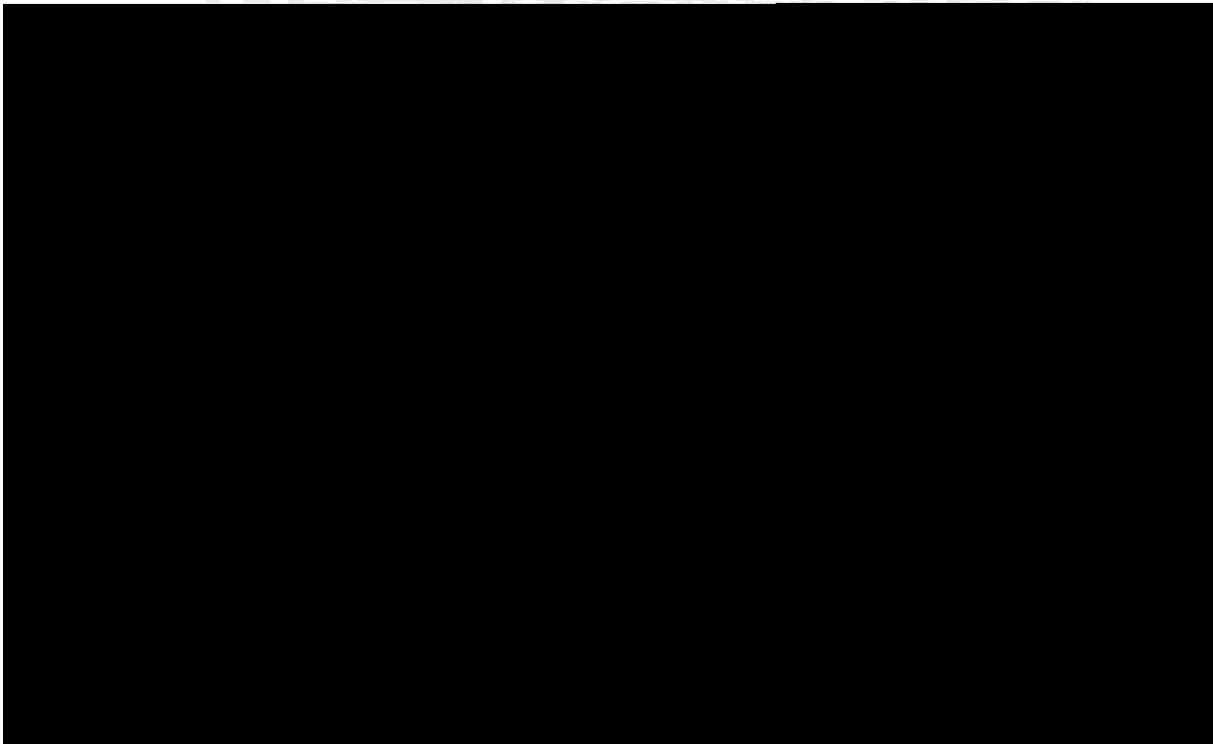


Judgment No. 2018-UNAT-815



Counsel for Mr. Nchimbi: Self-represented

Counsel for Secretary-General: Nathalie Defrasne

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6.4 [The Applicant] failed in his responsibilities as the assignee of the items by failing to report the matter to SSU when he discovered that the items were

recommended that the appropriate written off process/disposal of missing [United Nations] Owned Equipment be applied to the missing items.

pension. By way of relief, the UNDT ordered payment of compensation in the amount of USD 1,500 “for the three months’ unlawful procedural delay”.⁵

5. As stated above, Mr. Nchimbi filed his appeal on 16 August 2017 and the Secretary-General filed an answer on 17 October 2017. On 8 November 2017, Mr. Nchimbi filed a motion seeking leave to file additional pleadings in response to the Secretary-General’s answer to his appeal. By Order No. 304 (2017) dated 4 December 2017, the Appeals Tribunal denied the motion finding that Mr. Nchimbi had failed to demonstrate the existence of exceptional circumstances.

Submissions

Case No. 2017-1103

The Secretary-General’s Appeal

6. The Secretary-General submits that the UNDT erred on a question of law in finding that the ICTR Administration had unlawfully delayed Mr. Nchimbi’s check-out process. Under United Nations Financial Regulation 6.5 and Financial Rule 106.7, the Organization has an obligation to investigate any missing items in order to determine whether said items were lost or stolen and who is responsible for the disappearance, irrespective of whether the life expectancy of such assets may have been reached. In the present case, there was confusion as to the number of lost items assigned to Mr. Nchimbi and the circumstances under which those items had disappeared. Accordingly, the ICTR Administration could not simply write off the items but rather exercised due diligence in requesting an investigation. The delay of three and a half months in Mr. Nchimbi’s check-out process was, therefore, not only reasonable but necessary to account for the loss of property in accordance with the Financial Regulations and Rules.

7. Furthermore, the Secretary-General asserts that the UNDT erred in its award of compensation for delay. He claims that there was no procedural delay warranting the award of compensation. As stated above, the ICTR Administration had an obligation to investigate the missing items and the period of three and a half months to investigate and proceed with Mr. Nchimbi’s check-out was not unreasonable. Even if there had been such unreasonable delay, the UNDT erred in awarding compensation without evidence of harm in contravention of

⁵ *Ibid.*, para. 57.

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required to address the points of argument that it considers relevant to resolve the case. In addition, Mr. Nchimbi's submission that no list of the lost items has been provided is incorrect.

20. Finally, according to the Secretary-General, Mr. Nchimbi has failed to demonstrate that the UNDT erred in its award of compensation. In accordance with Article 10(5)(b) of the UNDT Statute, the UNDT may only award compensation supported by evidence of harm for

as a condition of obligation under

the (Financial Regulations and Rules E-2 (United Nations)) [TJ 2168855 0 TD .05 Tw [e aee investigation in the th

b) Not to provide him with a copy of the repo

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